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Attorneys for Plaintiff and Counter-Defendant ViaSat, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 5, 2018, at 10:30 a.m. PST, or as soon
 3 thereafter as counsel may be heard in Courtroom 5A of the Edward J. Schwartz
 4 Courthouse, located at 221 West Broadway, San Diego, California, 92101, Plaintiff and
 5 Counter-Defendant ViaSat, Inc., will move, and hereby does move, based on Rule 702 of
 6 the Federal Rules of Evidence and the standards set forth in *Daubert v. Merrell Dow*
 7 *Pharm., Inc.*, 509 U.S. 579 (1993), for an order to exclude certain opinions of Dr.
 8 Richard Koralek, Dr. Alexander Vardy, and Mr. Brent Bersin. ViaSat seeks an order
 9 prohibiting Defendant and Counter-Claimant Acacia Communications, Inc. from offering
 10 at trial expert opinion testimony on any of the following issues:

- 11 1. Dr. Koralek's and Dr. Vardy's opinions regarding the contractual scope of the
 12 licensed "SDFEC Core," found at ¶¶ 119–24 of Dr. Koralek's November 21,
 13 2017 Report and ¶¶ 28–35, 55–59, 85, 117–18, 120, 200, 245, 277, 308, 336,
 14 358, and 380 of Dr. Vardy's November 21, 2017 Report.
- 15 2. Dr. Koralek's opinion that Acacia does not use ViaSat's Trade Secret No. 7,
 16 found at ¶¶ 24, 77–86, 99–105 of his November 21, 2017 Report.
- 17 3. Dr. Vardy's opinions that simply repeat assertions by fact witnesses, found at
 18 ¶¶ 60, 89, 200, 245, 277, 308, 336, 358, and 380 of his November 21, 2017
 19 Report.
- 20 4. Dr. Vardy's opinions regarding trade secret protection, found at ¶¶ 28–35,
 21 256–59, 261, 289–304, 306, 351–356 of his November 21, 2017 Report.
- 22 5. Mr. Bersin's opinion regarding the amount of ViaSat's unjust enrichment
 23 damages, found at ¶¶ 10, 56, and 58 of his November 21, 2017 Report.
- 24 6. Mr. Bersin's opinion regarding the amount of Acacia's unjust enrichment
 25 damages attributable to ViaSat's Project Gemini, found at ¶¶ 6, 49, 66–67, and
 26 69 of his October 27, 2017 Report and Exhibits 749 and 750 to his December
 27 13, 2017 deposition.

28 This Motion is based on this Notice of Motion and Motion, the Memorandum of
 Points and Authorities in Support of ViaSat's Motion to Exclude Expert Testimony, the
 Declaration of Patrick M. Shields and exhibits attached to it, and the Declaration of Dr.

Russell Fuerst, all of which are filed and served with this notice, as well as any other evidence and argument as may be presented at or before the hearing of this matter.

Dated: February 2, 2018

/s/ Kenneth M. Fitzgerald

Kenneth M. Fitzgerald

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CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for Acacia Communications, Inc., per the agreement of counsel.

Dated: February 2, 2018

s/ Kenneth M. Fitzgerald

Kenneth M. Fitzgerald, Esq.